

**VF Distribution Center and Union of Needletrades,
Industrial and Textile Employees, Local Union
2610. Case 11-CA-17264**

January 23, 1998

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS FOX AND
BRAME

On August 28, 1997, Administrative Law Judge D. Randall Frye issued the attached decision. The Charging Party filed exceptions and a supporting brief, and the Respondent filed an answering brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the record in light of the exceptions and briefs, and has decided to affirm the judge's rulings, findings,¹ and conclusions² and to adopt the recommended Order.

ORDER

The recommended Order of the administrative law judge is adopted and the complaint is dismissed.

¹ The Charging Party has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enf'd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

We correct the judge's inadvertent references to employee Molly Coleman as Molly Blanton, employee Joe Hayden as Joe Hagden, and Supervisor Diane Allen as Supervisor Smith.

² In dismissing an allegation that the Respondent more closely monitored employees who are union officials, the judge found, based on credibility resolutions, that the alleged conduct did not occur. In addition, the judge relied on a finding that the Respondent maintains a work environment that fosters collective bargaining. In adopting the dismissal of this allegation, we rely solely on the judge's credibility-based factual findings, and we do not adopt his rationale concerning the collective-bargaining atmosphere at the Respondent's facility.

Member Brame adopts the judge's rationale in its entirety.

Jasper C. Brown Jr., Esq., for the General Counsel.
Charles P. Roberts, Esq. (*Haynesworth, Baldwin, Johnson & Graves*), of Greensboro, North Carolina, for the Respondent.

DECISION

STATEMENT OF THE CASE

D. RANDALL FRYE, Administrative Law Judge. On an original unfair labor practice charge filed on November 12, 1996, in Case 11-CA-17264 and an amended charge filed on December 4, 1996, a complaint issued on December 31, 1996. The complaint alleged that the Respondent violated Section 8(a)(1) of the Act by implementing a rule prohibiting employees from talking about the Union and by more closely

monitoring the activities of two employees who held leadership positions in the Union. In its answer, the Respondent denied these allegations.

The above-captioned proceeding was heard in Wentworth, North Carolina, on March 14, 1997. All parties were afforded full opportunity to appear and to examine and cross-examine witnesses. Prior to close of hearing, oral argument was made on behalf of the General Counsel and the Respondent.¹

On the entire record, including my observation of the witnesses and their demeanor, and after carefully considering the oral arguments, I make the following

FINDINGS OF FACT

I. JURISDICTION

The Respondent is a Delaware corporation with a facility located in Reidsville, North Carolina, where it is engaged in the distribution of manufactured goods. The complaint alleges, the Respondent admits, and I find and conclude that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act. The complaint further alleges, the Respondent admits, and I find and conclude that Union of Needletrades, Industrial and Textile Employees, Local Union 2610 is a labor organization within the meaning of Section 2(5) of the Act.

II. BACKGROUND

The Union has represented the Respondent's production and maintenance employees since 1992. The initial collective-bargaining agreement was effective from December 20, 1992, to December 20, 1996. Bargaining for the second contract began in mid-1996 and resulted in a new agreement which is effective from October 21, 1996, to October 21, 1999, although a decertification petition was timely filed.

The parties' collective-bargaining agreement includes a number of work related rules. The rule at issue in this case prohibits employees from talking rather than working. As stipulated to by the parties, the Respondent's established practice was to give employees an oral warning for the first offense each day before issuing a written reprimand. Counsel for the General Counsel contends inter alia, that this rule was disparately applied during the month of October 1996.

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. Promulgation of an Unlawful Rule

Employee Janice Smith testified that Supervisor Melissa Wilson approached her in the picking area² and advised "that she didn't want to catch me talking to Sandra Wilson anymore because" she knew what we were talking about. Shortly thereafter, Smith resumed picking up items indicated on her work orders which led her upstairs to where Sandra Wilson was working. Smith testified that she then informed Sandra Wilson of the alleged prohibition against talking. While the two employees were talking, one on each side of the conveyor belt, Supervisor Melissa Wilson approached

¹ The right to file a written brief was waived by both parties.

² A pick run includes duties such as obtaining tickets describing ordered merchandise and then retrieving that merchandise which is stored in different areas of the building.

them and told them to “get back to work.” (Tr. 140.) Sandra Wilson testified she told Supervisor Wilson that she “thought that was harassment and she needed to tell some none [sic] union people that she was going to write them up.” Supervisor Wilson testified that she told them both that it did not matter who they were or what they were talking about but that they had to get back to work and that “that was, at that time, the verbal” warning. (Tr. 141.) Supervisor Wilson testified further that, at no time, did she tell the two that they were not to talk to each other. Importantly, employee Sandra Wilson admitted that Supervisor Melissa Wilson only instructed her to not talk to Janice Wilson for the remainder of the day or she would have to issue a written warning. This testimony conforms substantially to Supervisor Wilson’s testimony regarding this incident.

Supervisor Wilson testified in a forthwith manner. Based on her demeanor, I fully credit her testimony in all respects. Accordingly, I find that the Respondent did not promulgate an unlawful rule as alleged in the complaint.

B. More Closely Monitoring Union Officials

Some employees of the Respondent opposed the Union and thus signed and supported a decertification petition which was timely filed in Region 11 on October 15, 1996. Sometime in October 1996, and prior to October 15, 1996, Anthony Wayne Coles, who was employed by the Union as a service representative, was advised by an employee of the Respondent that a decertification petition was being circulated at the Respondent’s facility. Thereafter, Coles spoke by telephone to the Respondent’s plant manager, Rick Tomlinson, who informed Coles that he was unaware of a decertification petition. Coles also informed Tomlinson that Molly Blanton was the employee who had called him regarding the petition. After the call ended, Tomlinson spoke to employee and union member Molly Blanton, who advised that she had observed an employee in the special operations section who was unauthorized to be there. She further stated, “Well, I just wanted to be sure that everybody plays by the same rules.” Tomlinson then spoke to Blanton’s supervisor, Joyce Gaves, who stated that no unauthorized employee had been in her work area. That same afternoon, Tomlinson met with all supervisors and asked them to remain in their work areas and ensure that “nobody was passing anything around” during worktime.

On October 15, 1996, Coles, pursuant to past practice, made a routine visit to the plant to speak with employees. The first employee with whom he spoke was then Local Union President Janice Smith. After 1 or 2 minutes of conversation at her work station, the two were approached by Supervisor Melissa Wilson who instructed that company rules limit such conversations to 5 minutes.

Employee Janice Smith testified that in mid-October 1996, her supervisors, Diane Allen and Melissa Wilson, watched her more closely than other employees, ostensibly because Smith was a union official. Several examples were provided by Smith. The first instance allegedly occurred when Smith was in the stocking area and was approached by Supervisor Wilson who informed her that “if she caught me in the stocking area again, she was going to put me back in stocking.” At the time, according to Smith, she was in the stocking area to return a box and was inquiring of another employee if it was his box when she was admonished by Super-

visor Wilson. According to Smith, she has seen “other employees in the stocking area and nothing would be said to them.” (Tr. 19.) However, no testimony was presented with respect to the identity of these individuals. Supervisor Wilson denied making any threats to Smith or treating her differently than other employees. Based on demeanor, I credit all aspects of Supervisor Wilson’s testimony.

The second incident occurred when Smith ran out of tickets to fill and stopped to talk with two other employees. Supervisor Wilson approached Smith and told her to get more tickets to fill. According to counsel for the General Counsel, this conduct is unlawful because other employees were not similarly instructed. The third incident, according to Smith, occurred in mid-October when she was advised by Diane Allen to return to her work area rather than remaining at the mezzanine rail watching employees below on the first floor. Smith further stated that, in the past, she has observed employees Joe Hagden, Kathy Wilson, and Wanda Tate stand and talk.

Both Supervisors Wilson and Allen testified that they neither watched employees Wilson and Smith more closely than other employees nor treated them differently than other employees. Both supervisors spend approximately 50 percent of their 8-hour workday in the work area with employees. Routinely they instruct employees to stop talking and resume working, conduct consistent with established work practices and work rules. Based on their demeanor, I fully credit the testimony of Supervisors Wilson and Smith.

Counsel for the General Counsel contends that in all respects the above facts support a finding that the Respondent permitted employees who supported the decertification petition free rein of the plant while more closely monitoring the activities of employees who supported the Union. This was done, according to counsel for the General Counsel, so that union supporters could not interfere with the efforts of the decertification supporters. However, based on my credibility resolutions, this argument cannot prevail. Moreover, the evidence presented at hearing clearly demonstrates a work environment which fosters collective bargaining as well as the principles embodied in the Act. In this regard it is noted that the parties recently negotiated a new 3-year contract, effective October 20, 1996. Grievances have been processed and amicably resolved pursuant to this contract. Also, absent from this case is any evidence of antiunion animus or hostility toward the Union. The fact that some employees opposed the Union and supported a decertification petition does not dilute such a conclusion as they were engaging in conduct fully protected by the Act.

Finally, to the extent that some supervisors may have been watching all employees in the workplace more closely in October 1996, I find such conduct to be lawful. In this regard, the only credible evidence reveals that Coles, the union representative, inquired of Tomlinson as to whether he was aware that a decertification petition was circulating in the plant. In response, Tomlinson then met with all supervisors and requested that they take steps to ensure that employees did not circulate the petition in the plant during worktime. These efforts by Tomlinson were clearly designed to ensure that all employees were treated fairly as well as consistently. Moreover, Tomlinson was an impressive witness and based on demeanor, I fully credit his testimony in all respects.

In view of my credibility resolutions, I conclude that the unlawful rule, as alleged in paragraph 8(a) of the complaint, was never promulgated. I also conclude, based on credibility, that neither employee Smith nor employee Wilson were more closely supervised or monitored as alleged in paragraph 8(b)

of the complaint. Accordingly, I shall dismiss the complaint in its entirety.

ORDER

The complaint is dismissed.